



T O W N o f B R O O K L I N E

Massachusetts

Walnut Hills Cemetery Old Burying Ground

Trustees

*Robert Cook, Chairman
Gerard Hayes
Richard Leary
Joslin Ham Murphy*

Director of Parks and Open Space

Erin Chute Gallentine

Walnut Hills Cemetery Trustees Meeting

Wednesday, February 12, 2014

5:30pm – 7:00pm

Trustees Present: Richard Leary, Robert Cook, Joslin Ham Murphy, Gerard Hayes.

Trustees Absent: **Staff Present:** Erin Gallentine, Director of Parks and Open Space, Jessica Zarni, Parks Administrative Assistant

Guests Present: William McDermott

1. Welcome and Approval of Minutes (Robert Cook, Chair)

R. Leary moved for approval of the minutes. Seconded by G. Hayes. All in favor.

2. Sign Deeds

The deeds were reviewed and signed by the Trustees. G. Hayes raised the question of eligibility to purchase lots and fairness. E. Gallentine reviewed eligibility requirements, as established by the Cemetery Trustees, to purchase lots within the Walnut Hills Cemetery. E. Gallentine and G. Hayes discussed employees who after 20 years of service for the town, and while still employed by the Town, are eligible to purchase lots within the Walnut Hills Cemetery. Each resident may purchase up to two lots in their name. It is up to the discretion of the lot owner to determine who is buried within the plot. The Cemetery Trustees have established eligibility to purchase lots at the Walnut Hills Cemetery, but do not regulate who is interred within said lots. R. Cook asked if the Trustees are signing deeds because it has always been done or are they signed because there is a legal obligation. E. Gallentine stated that, it has been a role of the Trustees since long before she commenced with the Town, and it appears to be not only tradition, but confirmation of the business transaction (including perpetual care) and confirmation of the eligibility requirements. The Town is responsibility for verifying that each individual meets the eligibility requirements. R. Cook was just looking for some understanding. R. Cook listed alternatives as to who else could sign

the deeds. E. Gallentine stated that the Trustees are advisory except in their role to establish fees and eligibility to purchase lots and hold a supervisory role as it relates to the Trust Funds. R. Cook is interested in the legal responsibilities vs. the traditional responsibilities. R. Cook and G. Hayes asked, if the Trustees choose to no longer sign the deeds, is there a legal obligation to sign. J. Murphy stated that under the Bylaws and Special Acts the Trustees retain the authority to determine eligibility for burial. Signing the deeds seems like a reasonable responsibility given the Trustees role. R. Cook asked if that was the single authority retained by the Trustees, J. Murphy stated that she believes that they also retain a supervisory role over the Trust Funds. R. Leary stated that the Trustees are making a commitment for perpetual care of the lot and he does not believe that can be delegated to anyone else, because it is a commitment by the Cemetery. J. Murphy read a part of the Bylaws, section 6 subject to chapter 32 of the acts of 1981, and it summarized how the deeds must be signed by no less than four of the Trustees. G. Hayes asked if the Trustees should assume the requirements are checked beforehand or is it the responsibility of the Trustees to make sure the residential requirements are factual. G. Hayes asked why the Trustees would need to sign the deeds at all if the requirements are verified; E. Gallentine went through the step by step process of the residency requirements, creation of the deed, signing of the deed and sending it to the purchaser and recording it at the Cemetery and Town Hall. J. Murphy stated that D. Hingston in the past had questions about certain individuals residency verifications and would help with due diligence as needed. The checklist was discussed for residency verification. J. Murphy stated that she is comfortable with the current residency verification process. The Trustees discussed the signing of the deeds and trust fund management. R. Leary stated that the Trustees are committing the cemetery to provide perpetual care and believes the Trustees need to sign the deeds.

3. Update of Ledge Meadow Layout

Survey, layout and numbering of all lots at Ledge Meadow have been completed and transferred from AutoCad to HMIS: Cemetery Software program. In addition, all those who had purchased lots prior to the build out have been communicated with and paperwork revised. The deeds signed this evening are the last of the deeds that need to be converted to the new numbering system. E. Gallentine stated that adding the full body lot spaces was well worth the positive customer relations and also for the additional full body lots that are now available. She acknowledged Bob Cook for his assistance in that process.

4. Old burying ground update

Progress has been made on both the restoration of the Historic Cook Lot Fence and the stabilization of the tombs bid documents at the Old Burying Ground. The Cook Fence work continues to move forward with a good deal of the work being done in the shop over the winter. E. Gallentine passed around two images showing the work that has been done for the restoration and the work for the granite bollards. E. Gallentine described the type of detailed work that goes into repairing the bollards. The material samples have been approved. E. Gallentine described the current condition of ornamental bollards and posts; a few of them could be restored, but the rest had to be installed new.

E. Gallentine stated that the historic fence restoration process went as follows: The Friends of the Old Burial Ground provided funds as well as the Town of Brookline, there was a request for qualifications for a contractor, the most qualified contractor was selected, there was a bid price, the approach was negotiated and a contract was awarded and executed. Parts of the contract are paid for by the Town and a portion is paid for by The Friends of the Old Burial Ground, but the town approves all the invoices and manages all work before anything is processed. R. Cook and E. Gallentine discussed the Historic Preservation Consultants, Structures North. E. Gallentine noted that Bill Smith, Project Manager for the Town had done a nice job overseeing the quality of the work.

The Old Burying Ground Tombs were discussed. E. Gallentine showed pictures of the failing tombs. The tree removal work above the tombs has been completed. E. Gallentine discussed the poor condition of the trees that were removed and described how those trees were pushing the face of the tombs out. E. Gallentine passed out copies of the preliminary restoration drawings and sketches. Structures North is completing the preliminary drawings and bid work. E. Gallentine stated that with the funds that are available not all the work will be completed at once. The Town will start with the tombs on Bolyston Avenue that are in the most dire condition. E. Gallentine discussed the different approaches for the doors to the tombs that have been discussed: wood, slate and painted steel. R. McDermott asked E. Gallentine what is inside the tombs and E. Gallentine stated that the tombs are occupied with burials and there is a specific process that the contractors will adhere to in order to work in that space. R. Cook and E. Gallentine discussed how old the tombs are. E. Gallentine stated that there are some requirements when it comes to archeology when dealing with old burying grounds. Permits are obtained and instead of disinterring you put sand in these tombs over everything; you do all your work with staging above that and leave everything at ground level in situ.

5. Capital Projects Update

In the FY15 CIP there is \$100,000 from SW01 to continue roadway improvements at the Walnut Hills Cemetery. There is fifty thousand in the forecast for FY16 for roadways and the Trustees need to decide if this is something they want to pursue next year. E. Gallentine stated that she had distributed the Trustees twelve year vision for capital improvements that included the roadway improvements, a long range forecast of tree removal and replacement for FY22,FY23,FY24 (\$50,000 each year) , a design consultant to work with the Town to plan on the next build out inFY22 estimated at \$70,000 and a construction build out in FY24 estimated at \$700,000. These capital projects have been discussed with the Deputy Town Administer. E. Gallentine discussed the general expenditures that come out of TW23 annually.

6. Walnut Hill Cemetery Trusts/Funds Discussion

R. Cook stated that over the last month or so he has tried to come to some understanding of how the trusts work and something of the history of the trust. E. Gallentine passed along research to R. Cook regarding background into the trusts. R. Cook concluded that the structure of the trusts were in large part set up by the Trustees and the Trustees in R. Cook's opinion therefore retain the power to restructure the trust should they so choose without violating any legal mandates. These funds represent decisions made in the past by the Trustees to set aside money for the care of the lots that are sold. They had a formula and that has changed in wording, but in large part has stayed incredibly stable overtime. The Trustees have the power, without concern for the Town, to change if they so

choose and that is the conclusion R. Cook has at this point. E. Gallentine stated that both her office, the legal office, the Comptroller and Treasurer have looked for the instruments of Trust. It is possible something was misfiled (or put in a Trustees' personal file), but the Town has searched all of the logical places where information may have been found including the Engineering vault files and the Registry of Deeds. J. Murphy and R. Cook discussed legal trusts. E. Gallentine stated that it is not just a Trustee responsibility, but the Town shares responsibility as well as it is Town property managed by Town staff. J. Murphy is unsure that is correct. R. Leary inquired how the Non-Expendable Trust Fund differs from the Perpetual Care Funds, as there are specific statutes that govern the use of Perpetual Care Funds. R. Cook asked why it is not expendable, and whether today the Trustees could decide that that is expendable. J. Murphy stated that it is a state law. R. Leary stated that the purpose is to ensure that there are funds for perpetual care and that these funds won't be siphoned off or used. R. Cook stated that these are external things that put restraints on things done internally by the Trustees. E. Gallentine stated this is the very question that the Trustees had discussed seeking a 3rd party legal opinion. A legal opinion that, given the absence of any formal trust document, would state what the parameters are with cemetery trusts specifically and what the Trustees should do since there are no governing documents for the Trusts. R. Cook inquired if there was any difference between the Non-Perpetual Care Funds vs. The Expendable Funds in terms of investments. E. Gallentine stated that she believes if you look at the bylaws the Trustees have the ability to adjust the split amongst Non-Expendable Trust to SW01 as long as it is no less than fifteen dollars in the Non-Expendable Trust. R. Cook stated that there are three layers: 1.) the decisions made by the Trustees governing these funds going back a century, 2.) Town Bylaws which have some control or constraints over what can be done and 3.) Commonwealth of Massachusetts's Statutory Laws also constraining what has to be in place and what can be done. J. Murphy stated that we were never able to find whether there was a Trust Document, which would delineate the separation of constraints. R. Cooks stated that there is no urgency to reconcile this issue, but now he has a little more clarity and feels that he needs to do some work with J. Murphy on the statutory side. J. Murphy stated that someone in her office will help R. Cook it cannot be her. R. Cook asked a question for the next meeting if we then would want to hire someone to come up with an independent opinion. E. Gallentine stated that she believes we have been utilizing the funds very appropriately and within the definition of Perpetual Care. The Trustees discussed the idea of arbitrarily giving up part of the Non-Expendable Trust Funds and turning it over to the Town budget, and the Trustees discussed how they don't think this can happen. R. Cook asked if there was a town meeting vote each year. E. Gallentine explained that Town Meeting voted for the transfer of funds from SW01 to the Town's General Fund each year to support the operation of the cemetery and any capital projects to be funded out of SW01 were also subject to a Town Meeting vote. E. Gallentine and R. Cook discussed the origins of the Town Meeting votes and why it is required.

E. Gallentine discussed the spreadsheets she designed with S. Cronin (at the request of the School Override Study Committee). The purpose of the spread sheet was to come up with various scenarios looking at different contributions to the town, the 50/50 split and to take a close look at the fees. They also wanted to find out what the value of the Non-Expendable Trust would need to be in an estimated 20 years to cover your future perpetual care requirements. E. Gallentine looked at this scenario and shared an example with the Trustees. R. Cook discussed a scenario in which he had to build a financial projection model where he could change the assumptions and project it out to look at different scenarios for the Arnold Arboretum. The Trustees discussed the future in which all the land was sold, there were no more interments and the Cemetery would just need daily maintenance. E. Gallentine stated that rates were looked at and what would it cost if the Cemetery was closer to being fully funded. That would mean doubling the sale and service rates. Then the question would be whether or not people would pay these fees. E. Gallentine went through the spreadsheet, and

described the bigger question being raised regarding how the Cemetery can contribute more to the Operating Budget of the Cemetery. E. Gallentine stated that the first page of the spreadsheet that she and S. Cronin created has the fiscal years across the top and the starting fund balance for SW01 and TW23. The formula took an average of the revenues in SW01 over the last five year and the average interest earned in TW23 and then applied expenditures and capital projects. E. Gallentine went through a few different scenarios from the spreadsheet. E. Gallentine and R. Cook discussed the scenario in which the Cemetery did double its rates. R. Cook stated that he needs to work more on the statutory side of things and discussed the idea of a consultant coming in and giving a legal opinion. J. Murphy stated that she had recommended C. Rounds, and gave some personal background on him. R. Cook asked if it would be reasonable for him to come in and give the Trustees a proposal. E. Gallentine stated that a clear scope should be developed first. R. Cook asked if a scope could be developed at this point and J. Murphy responded with a no. R. Cook stated that he will email J. Murphy, put the time into trying to get more information and decide what the next steps would be for the next meeting.

7. New Business

No New Business.

8. Adjourn

R. Cook moved to adjourn. Seconded by R. Leary. All in favor.